IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.432 of 2006

Elumalai ... Petitioner

vs.

1. The Commissioner of Police,
Greater Chennai,
O/o The Commissioner of Police,
Egmore, Madras 600 009.

2. The Secretary to Government
Prohibition and Excise Dept.,
Fort St.George,
Madras 600 009. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the Detention Orders of Mr.Elumalai, son of Mr.Kannukavunder, presently lodged in Central Prison, Madras, in Memo No.43/BDFGISV/2006, dated 06.02.2006, passed by the respondents and set aside the same and direct the respondents to produce the detenu before this Court and set this petitioner at liberty.

For Petitioner : Mr.Daniel Mary

For Respondents : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor.

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O R D E R

P.SATHASIVAM, J.

The petitioner herein challenges the detention order, dated 06.02.2006, detaining him as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, after taking us through the details relating to the adverse cases and the ground case, contended that it cannot be said that the offences alleged to have been committed by the detenu adversely affected the maintenance of public order as the public were not put in fear; nor it had the potentiality to create a scene of alarm and insecurity in the locality; at the most, it may be said to have affected the maintenance of pubic order, hence, it is apparent that the impugned detention order came to be passed mechanically without application of mind. He further contended that since the detenu and another person were apprehended at the spot, the claim that normalcy in that area is dislocated is baseless, thus, the order of detention is illegal and liable to be set aside.

4. Learned Additional Public Prosecutor by placing entire records, met both the contentions raised by the counsel for the petitioner.

5. It is seen that the first adverse case relates to an occurrence, said to have taken place between 20.10.2005 and 21.10.2005 at Sriram Colony, in respect of which, a case was registered in Cr. No.2604 of 2005 on the file of J5 Shastri Nagar Police Station for offences under sections 35B & 36AE, TNF Act, 1882 read with 44 of TNF Act 1992 read with Rule-30 of Sandalwood Transit Rules 1967 read with Sec.379 IPC. The second adverse case pertains to Crime No.3167 of 2005 on the file of J5 Shastri Nagar Police Station registered under the very same provisions, and the occurrence is between 11.12.2005 and 12.12.2005. The third adverse case relating to the occurrence dated 04.01.2006, was registered in Cr. No.27 of 2006 on the file of the very same police station under the same provisions as in the previous cases. As regards the ground case, the occurrence took place on 12.01.2006 and the offences involved are punishable under Sections-341, 336, 427, 392 and 506 (2) IPC., the Crime Number being No.86/2006 on the file of J5 Shastri Nagar Police Station.

6. The materials placed before the Detaining Authority show that the detenu is a native of Tiruvannamalai District. While admitting the offences committed by him, the detenu has made a statement that only under the instructions of one Viswanathan, who had the knowledge of the sandalwood trees at Theosophical Society, Adyar, Chennai, he cut those trees and handed over to him about three trees and that he was also paid for it. According to him, the said Viswanathan was standing by the side of the road while he was cutting the trees. The police did not arrest the said Viswanathan though he is the main

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accused. Further, the offence is punishable only under Section 379 IPC. The offences relating to the adverse cases were committed only at midnight at a private place and not in a public place.

As rightly pointed out, the activities of the detenu cannot be said to have adversely affected the maintenance of public order nor created a sense of alarm and insecurity in the locality as the same would come under the domain of 'law and order'.

7. In the ground case, the offences involved are punishable under Sections 341, 336, 427, 392 and 506 (ii) IPC. Learned counsel appearing for the petitioner, by drawing our attention to the offences said to have been committed by the detenu in the adverse cases and the ground case, argued that the grounds of detention is severable. The offence relating to the ground case is that the detenu voluntarily inserted his hand into the pocket of one Ganesan and took away Rs.70/-, threatening him at knife point. The materials show that the offence did not adversely affect the maintenance of public order as it was against an individual. It also shows that the detenu and another were apprehended at the spot. If that is so, the claim of the Detaining Authority that out of fear, the public moved for safer place and there was traffic dislocation etc. cannot be accepted.

8. Taking note of the fact that, as the detenu and another person were apprehended at the spot, there is no acceptable material to show that normalcy in that area was totally dislocated; and of the claim of the detenu that only at the instance of one Viswanathan, he entered the Theosophical Society and cut the sandalwood trees and received money for the same; we are of the view that, at the most, he is liable to be dealt with under the normal procedure, i.e., punitive law and not under the preventive law. All the above material aspects were not considered by the Detaining Authority. The first respondent has passed the order of detention mechanically without application of mind, hence, the same is liable to be set aside.

9. In 2003 SCC Criminal 537 (Darpan Kumar Sharma v. State of T.N.), Their Lordships of the Supreme Court, after finding that solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order, quashed the order of detention made by the respondents therein.

In 2004 (1) CTC 527 (Nagarajan, M. v. Secretary to Government, Prohibition and Excise Department, Government of Tamil Nadu), following the decision of the Supreme Court in Darpan Kumar Sharma's case (cited supra), a Division Bench of this Court came to the

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conclusion that based on a solitary instance, wherein the detenu is said to have robbed in a public place, the detention order cannot be sustained, and quashed the same.

10. In the case on hand, we have already observed that all the three adverse cases relate to theft of sandalwood in a private place namely, Theosophical Society, and the same has nothing to do with the ground case occurrence, based on which, the detention order has been passed. As rightly pointed out, though in the grounds of detention, the Detaining authority has stated that, by committing the offences in public, the detenu created a sense of alarm and thereby acted in a manner prejudicial to the maintenance of public order, we find that the statement available in the grounds of detention is more in the nature of a ritual rather than with any significance to the content of the matter, particularly in the light of the claim of the detenu that he cut the sandalwood trees on the instruction of one Viswanathan, who is not even arrested by the police and also of the fact that the detenu and another were apprehended at the spot.

11. For all these reasons, we are satisfied that the Detaining Authority has failed to take note of all the relevant materials and passed the detention order mechanically. Consequently, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case or cause.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Commissioner of Police,Greater Chennai,
O/o The Commissioner of Police,Egmore, Madras 600 009.

2. The Secretary to Government,Prohibition and Excise Dept.,
Fort St.George,Madras 600 009.

3. The Superintendent, Central Prison, Chennai.

4. The Joint Secretary to Government, Public (Law and Order), Fort St.George, Chennai-9.

5.The Public Prosecutor, High Court, Madras.

+ one cc to Ms.Daniel Mary, Advocate, Sr.No.35491.

HCP. No.432 of 2006

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